

Congress of the United States  
House of Representatives  
Washington, DC 20515

January 14, 2020

Mr. Charles S. Phalen, Jr.  
Acting Director  
Defense Counterintelligence and Security Agency  
27130 Telegraph Road  
Quantico, VA 22134

Dear Mr. Phalen:

I write to request information and assistance regarding a disturbing trend affecting my constituents' continued service in the Department of Defense and across government in positions requiring a security clearance. I specifically request the reasons my constituents who have been granted security clearance are now subject to additional requirements to maintain that clearance and continue employment in the armed forces, and why documents within their possession are insufficient to meet those requirements.

In recent months, several of my constituents, all of whom are serving in the U.S. Army and in the process of renewing their security clearance, have received notification from the U.S. Department of Defense Consolidated Adjudications Facility (DoDCAF) requiring them to provide additional proof of eligibility for U.S. citizenship in order to be eligible for access to classified information, assignment to duties designated national security sensitive, or Sensitive Compartmented Information.<sup>1</sup>

The DODCAF memoranda in each case points out that they were born in the Northern Mariana Islands prior to November 4, 1986, when citizenship provisions of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Covenant)<sup>2</sup> took effect. It goes on to state that individuals born and domiciled in the Northern Mariana Islands before November 4, 1986, could acquire U.S. citizenship provided they meet one of the conditions under Article 3, Section 301 of the Covenant. The memoranda also state that a U.S. Passport is not definitive proof that the Covenant's conditions have been met and lists supplementary documents sufficient to meet the additional proof requirement, including a Certificate of Citizenship issued by the U.S. Citizenship and Immigration Services (USCIS).

First, DoDCAF's understanding of U.S. citizenship acquisition under the Covenant is incomplete. Section 301 is not the only provision under which an individual born in the Northern Mariana Islands prior to November 4, 1986 acquires U.S. Citizenship. As a result of the Ninth Circuit Court of Appeals decision in *Sabangan v. Powell*<sup>3</sup>, persons born in the Northern Mariana Islands between January 9, 1978 and November 4, 1986 can also claim U.S. citizenship under section 501(a) of the Covenant.

<sup>1</sup> Executive Order 12968, August 2, 1995; DoDI 5200.02. DoD Personnel Security Program

<sup>2</sup> 48 U.S.C. 1801: Approval of Covenant to Establish a Commonwealth of the Northern Mariana Islands

<sup>3</sup> 375 F.3d 818 (2004)

Since then, the U.S. Department of State recognizes persons meeting the *Sabangan* criteria as U.S. citizens.<sup>4</sup> Two of my constituents issued the DoDCAF memorandum were born after January 9, 1978.

Second, the constituents who contacted me for assistance possess valid U.S. passports. According to 22 U.S.C. §2705, a valid U.S. passport has the same force and effect as a Certificate of Citizenship.<sup>5,6</sup> The State Department Foreign Affairs Manual sets out the process for adjudicating claims of citizenship under each section of the Covenant, which includes a list of acceptable evidence of domicile in the Marianas.<sup>7</sup> USCIS accepts a valid unexpired U.S. passport as proof of U.S. citizenship in adjudicating a request for Certificate of Citizenship, one of DoDCAF's acceptable supplementary documents<sup>8</sup>, and in its guidance for proof of U.S. Citizenship and Identification When Applying for a Job states that a U.S. passport is the best proof of U.S. Citizenship.<sup>9</sup>

I respect the need to ensure that only eligible individuals gain access to classified information, assignments to national security sensitive-duties, or Sensitive Compartmented Information. However, I do not understand why service members with valid unexpired passport must provide additional evidence of eligibility for U.S. citizenship when that eligibility has already been established by the U.S. Department of State, and recognized by the U.S. Citizenship and Immigration Services, the two federal entities who adjudicate claims of U.S. citizenship and therefore are the most experienced and knowledgeable on the subject.

Thank you for your timely attention to this matter. I look forward to your reply.

Sincerely,



GREGORIO KILILI CAMACHO SABLAN  
Member of Congress

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<sup>4</sup> 8 FAM 302.6: "Under the Sabangan decision (see 7AM 1126.3(c)(5)), applicants claiming U.S. citizenship under section 501(a) of the CNMI Covenant must have been born in the CNMI at or after 11 A.M. (Saipan time) on January 9, 1978 and prior to 12:01 A.M. (Saipan time) November 4, 1986 ..."

<sup>5</sup> 22 U.S.C. §2705: Documentation of citizenship

<sup>6</sup> The passport of individuals who had chosen to be classified as U.S. nationals rather than U.S. citizens pursuant to section 302 of the Covenant, would be endorsed, "THE BEARER IS A UNITED STATES NATIONAL AND NOT A UNITED STATES CITIZEN." 8 FAM 505.2-1,2-2.; 22 C.F.R., Parts 50, 51.

<sup>7</sup> 8 FAM 302.6, Acquisition by Birth in the Commonwealth of the Northern Mariana Islands

<sup>8</sup> See USCIS Form N-600, OMB No. 1615-0057, p. 9, item 6.

<sup>9</sup> See <https://www.uscis.gov/us-citizenship/proof-us-citizenship-and-identification-when-applying-a-job>.